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Decision

Matter of: WHR Group, Inc.

File: B-420776; B-420776.2

Date: August 30, 2022

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DIGEST

1. Protest that agency failed to give adequate consideration to an awardee's potential impaired objectivity organizational conflict of interest is denied where it was reasonable for the agency to conclude that no conflict would result from award of the blanket purchase agreement, and future potential conflicts that may arise under subsequent orders are properly analyzed at the time of those subsequent actions.
2. Protest challenging the agency's evaluation of protester's technical approach is sustained where the agency failed to adequately document the evaluation rating assigned to protester's quotation, and the error was prejudicial to the protester.
3. Protest challenging the agency's best-value tradeoff decision is sustained where the record reflects that the agency improperly increased the relative importance of price, and decreased the relative importance of the non-price evaluation factors, from that as set forth in the solicitation's stated evaluation criteria.

DECISION

WHR Group, off Pewaukee, Wisconsin, protests the establishment of blanket purchase agreements (BPA) with BGRS Relocation Inc., of Burr Ridge, Illinois, RELO Direct, Inc., of Chicago, Illinois, and Allegiance Government Relocation, of Woodbridge, Virginia, under request for quotations (RFQ) No. 15F06722Q0000045, issued by the Department

of Justice, Federal Bureau of Investigation (FBI), for employee relocation services. WHR alleges that the agency's evaluation of vendors' quotations and award decision were improper.

We sustain the protest.

BACKGROUND

The FBI's relocation program facilitates the relocation of eligible employees who move for the benefit of the government. Agency Report (AR), Tab 3, RFQ amend. 1 at 4.¹ In general terms, the statement of work (SOW) requires the contractor to provide all personnel, equipment, and supervision necessary to provide "relocation services that assist [FBI] employees and their family's market and sell homes, find new homes, ship possessions, and obtain information on school, taxes, and commuting." RFQ amend. 1, attach. B, SOW at 2.

The solicitation was issued on January 21, 2022, to holders of General Services Administration (GSA) multiple award contracts, special item number 531 (Employee Relocation Solution Requirements), pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. *Id.* at 1, 5; Contracting Officer's Statement (COS) at 1. The RFQ contemplated the issuance of one or more BPAs, under which fixed-priced "calls" would be placed, for a 12-month base period together with four 1-year options. RFQ amend. 1 at 7. The RFQ established that BPA award would be made on a best-value tradeoff basis, based on the following evaluation factors, listed in descending order of importance: (1) technical approach; (2) past performance; and (3) price. RFQ amend. 1 at 30, 35. The non-price factors, "individually and combined," were significantly more important than price. *Id.*

Six vendors, including BGRS, RELO Direct, Allegiance, and WHR, submitted quotations by the February 21 closing date for receipt of quotations. COS at 2. An agency source selection evaluation board (SSEB) evaluated vendors' non-price quotations using adjectival rating schemes that were set forth in the RFQ as follows: outstanding, acceptable, marginal, or unacceptable for the technical approach factor; and high confidence, satisfactory confidence, little confidence, no confidence, or neutral confidence for the past performance factor. RFQ amend. 1 at 31-32. A separate cost/price evaluation team assessed vendors' prices for completeness and reasonableness, in accordance with the solicitation. *Id.* at 35. The SSEB also identified strengths and weaknesses in the vendors' quotations in support of the ratings assigned.

On May 13, the contracting officer, as source selection authority (SSA), reviewed and accepted the finding and ratings of the evaluators. AR, Tab 14B, Source Selection

¹ The RFQ was subsequently amended. All citations are to the final, conformed version of the solicitation. Unless otherwise noted, references to page numbers are to the Adobe PDF document page numbers.

Decision Document (SSDD) at 2. The SSA thereafter concluded that “[d]ue to the similarities amongst vendor ratings for the non-price factors,” the three lowest-priced quotations, *i.e.*, BGRS, RELO Direct, and Allegiance, represented the overall best value to the agency. *Id.* at 3, 14. WHR proposed the next lowest price after the three vendors selected for BPA award.² *Id.* at 3.

After providing WHR with notice of the agency’s BPA award decision, and a brief explanation, this protest followed.

DISCUSSION

WHR raises several issues regarding the agency’s evaluation and resulting award decision. The protester first alleges that the agency failed to meaningfully consider the impaired objectivity organizational conflict of interest (OCI) resulting from an announced merger involving awardee BGRS. Second, WHR contends the agency’s evaluation of the protester’s technical approach was improper. Finally, WHR maintains the agency’s best-value tradeoff was unreasonable, and essentially converted the basis of award from best-value tradeoff to lowest-price, technically acceptable (LPTA). Had the agency conducted a proper evaluation and best-value tradeoff award decision, the protester argues, WHR would have been among those vendors selected for BPA award. Protest at 17-42; Comments and Supp. Protest at 3-46.

As detailed below, we find that it was reasonable for the agency to conclude, as it did, that no organizational conflicts of interest would result from the BPA awards and that future potential conflicts that may arise are properly analyzed at the time of those subsequent actions. We also find, however, that the agency’s evaluation of WHR’s technical approach was unreasonable in part, and that the agency’s award decision was inconsistent with the solicitation’s stated evaluation criteria. While we have also considered all of the remaining issues and arguments raised by WHR, we find no additional bases on which to sustain the protest.

Alleged Organizational Conflict of Interest

WHR alleges the FBI failed to meaningfully consider the impaired objectivity OCI involving awardee BGRS. Specifically, the protester asserts that as a result of a recently-announced merger agreement, BGRS will have a serious impaired objectivity OCI involving its use of affiliated moving companies (also referred to as transportation service providers, or TSPs) as part of BPA performance. Had the agency reasonably considered BGRS’s OCI, the protester argues, it would not have selected BGRS for

² For reasons that will become apparent, the table depicting vendors’ ratings and prices is provided in the relevant section of the discussion below.

award and would have made award to WHR instead.³ Protest at 17-25; Comments and Supp. Protest at 33-38.

The FAR requires that contracting officials avoid, neutralize, or mitigate significant potential conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) impaired objectivity; (2) biased ground rules; and (3) unequal access to information. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an impaired objectivity OCI exists where a firm's work under one government contract could entail evaluation of itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR 9.505-3; *ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 17; *Strategic Mgmt. Sols., LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, 2019 CPD ¶ 426 at 5.

In reviewing protests that challenge an agency's OCI determinations, our Office reviews the reasonableness of the agency's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Id.*; see *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). Moreover, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *ICI Servs. Corp., supra*; *Trailboss Enters., Inc.*, B-415970 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 10; see *Turner Constr. Co., Inc. v. United States*, 645 F.3d 1377, 1387 (Fed. Cir. 2011).

Relevant here, the SOW provided the following regarding move management services:

Transportation Service Provider (TSP) Selection: The Contractor may select any CHAMP [GSA centralized household goods traffic management program] TSP based on overall best value, availability, and Customer Service Index rating. The Contractor and the Agency will develop a best value strategy. The Agency has oversight and will make the final determination on what is considered best value for TSP selection. The

³ WHR also protested that the agency failed to consider generally the impact of the announced merger agreement on BGRS's proposed performance under the technical approach factor. Protest at 17-23. The agency addressed this issue in its report to our Office, Memorandum of Law (MOL) at 3-5, but WHR's comments to the merger challenge were limited to the impaired objectivity OCI allegation. Comments and Supp. Protest at 33-38. We therefore consider the remainder of the initially-raised issue to be abandoned and we will not consider it further. 4 C.F.R. § 21.3(i)(3); *Yang Enters., Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2.

Contractor is responsible for managing TSP selections/assignments in a way that maintains the highest level of customer satisfaction possible.

* * * * *

Quality Control and Service Performance Audit: The Contractor shall monitor . . . employee responses . . . and assist the FBI in evaluating TSPs. TSPs that do not perform at a level that is acceptable to the Contractor and FBI shall be suspended from use in future relocations.

SOW at 6.

The material facts are not in dispute: awardee BGRS is a subsidiary of Relo Group, Inc.⁴ COS at 5; BGRS Response to Agency Partial Dismissal Request, June 8, 2022, exh. A, BGRS Declaration at 6. The business entity SIRVA, Inc. (not a vendor involved in this procurement), is a subsidiary of Madison Dearborn Partners, LLC. COS at 5. On May 6, a week before the agency's May 13 award decision was made, BGRS's parent company (Relo Group, Inc.) and SIRVA's parent company (Madison Dearborn Partners, LLC) entered into a merger agreement (hereinafter BGRS-SIRVA merger) which was announced at that time. Protest, exh. 2, SIRVA and BGRS Press Release at 51-53. Once the merger occurs, SIRVA BGRS Holdings, Inc. (SIRVA BGRS) will become the parent company of BGRS. BGRS Response to Agency Partial Dismissal Request, June 8, 2022, exh. A, BGRS Declaration at 7. BGRS, however, "will continue to remain fully intact as the same discrete legal entity in good standing, with the same principal place of business, and the same EIN [employer identification number]." *Id.* The May 6 merger announcement also stated that the transaction was expected to close within the next 90 days and was subject to regulatory approvals.⁵ Protest, exh. 2, SIRVA and BGRS Press Release at 52.

SIRVA has described itself as "the only integrated moving/relocation solution in the industry," and a leading provider of end-to-end moving and relocation services. Protest at 22, exh. 2, SIRVA and BGRS Press Release at 53, exh. 5, SIRVA SEC Filing at 67. Further, SIRVA represents that various TSPs, which are on the GSA CHAMP listing, are also part of its "family of brands," *i.e.*, Allied Van Lines, North American Van Lines, and Global Van Lines. Protest, exh. 3, SIRVA Website Regarding Moving Services at 58, exh. 4, List of CHAMP TSPs at 61-64.

⁴ It is BGRS which holds the GSA multiple award contract (No. GS-33F-001HA) under which the agency issued the solicitation here. BGRS Response to Agency Partial Dismissal Request, June 8, 2022, exh. A, BGRS Declaration at 6.

⁵ Intervenor BRGS notified our Office, after issuance of the protected decision, that the BGRS-SIRVA merger transaction closed on July 29, 2022. Electronic Protest Docketing System No. 71.

WHR argues that BGRS failed to disclose, and the agency failed to meaningfully consider, BGRS's impaired objectivity OCI. Comments and Supp. Protest at 33. Specifically, WHR argues that once the BGRS-SIRVA merger occurs, BGRS "*could* select SIRVA's affiliates as TSPs to perform moving services for FBI employees under the BPA." Protest at 21. WHR also argues that after the merger occurs, the potential for an impaired objectivity OCI involving BGRS is twofold: (1) BGRS would have a financial incentive to select affiliated TSPs, and "keep that additional revenue 'in the family,'" including favoring a poorer-performing affiliate over a better-performing unaffiliated TSP; and (2) BGRS would be charged with evaluating the performance of its own affiliated moving companies. *Id.* at 23-24.

Given the proximity of time, the FBI explains, it was unaware of the merger announcement and therefore did not consider the pending BGRS-SIRVA merger prior to making the award decision. COS at 4. Nonetheless, the agency argues there is no merit to WHR's OCI allegation, because the claim is based on speculation, inferences, and contingencies, rather than hard facts. MOL at 6. Further, the agency states, "for there to even be a potential that BGRS would be conflicted from rendering impartial advice to the FBI, the proposed merger would need to be finalized," which did not occur prior to award and still has not occurred. MOL at 6. The agency also argues that even if the BGRS-SIRVA merger does occur, the involvement of TSPs does not come into play until individual orders are placed under the BPAs. COS at 5.

For its part, intervenor BGRS urges that the protest should be dismissed or denied. BGRS first asserts that insofar as the merger was announced a week before award, the agency was reasonably unaware of and "never in a position to assess the impact of the potential merger," including any potential OCIs, as part of making the award decision. BGRS Comments at 2. BGRS also contends that presently there is no actual or potential impaired objectivity OCI involving itself, as the OCI is factually predicated upon an event that has yet to occur--the BGRS-SIRVA merger. *Id.* at 4. Finally, BGRS argues that WHR's alleged OCI should be considered "unripe, as GAO precedent establishes that OCIs that may arise under future task orders must be analyzed at the time of those future actions." *Id.*, citing *Hanford Integrated Infra. Servs. Contractor, LLC*, B-418411 *et al.*, Apr. 22, 2020, 2020 CPD ¶ 159 at 9; *MAR, a Div. of Oasis Sys., LLC*, B-414810.5, July 26, 2018, 2018 CPD ¶ 266 at 5; *Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Sols. LLC*, B-407948 *et al.*, Apr. 29, 2013, 2013 CPD ¶ 112 at 21. We agree.

We find no basis on which to sustain the protest here. The record reflects that the BGRS-SIRVA merger was announced on May 6, a week before the agency's award decision was made. As stated above, an agency's obligation to consider the effects of a corporate transaction--including any potential OCIs--arises only when the agency becomes aware of an imminent and essentially certain corporate transaction prior to award. *Morgan Bus. Consulting, LLC*, B-418165.6, B-418165.9, Apr. 15, 2021, 2021 CPD ¶ 171 at 5. An agency's lack of knowledge of a proposed corporate transaction is generally not unreasonable, and an agency generally has no affirmative obligation to discover and consider such information. *Id.* As the FBI was unaware of the proposed

transaction at the time of award, and as the transaction was not an imminent and essentially certain one at the time of award, we find no obligation on the agency's part to have considered the effects of a BGRS-SIRVA merger agreement, including any potential OCIs, prior to award. *Id.*

Moreover, the agency notes that even if the BGRS-SIRVA merger does occur, the involvement of TSPs does not come into play until individual orders are placed under the BPAs. In fact, according to the agency, it is uncertain until individual orders are placed with BGRS whether any SIRVA-affiliated TSPs would be available and subject to consideration for performing the required transportation services.

Our Office has expressly recognized that OCIs that may arise under subsequent awards--in this case the issuance of individual task orders--are properly analyzed at the time of those subsequent actions. *MAR, a Div. of Oasis Sys., LLC, supra*; *Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Sols. LLC, supra*. Since it is unknown if the BGRS-SIRVA merger will occur and, even then, whether any SIRVA-affiliated TSPs would be available for consideration under BGRS orders until such orders are placed, it would be premature to conclude that BPA award to BGRS creates an OCI. *See MAR, a Div. of Oasis Sys., LLC, supra* at 5-6 (finding that to the extent future task orders might present a possible OCI, the agency will evaluate the question at the time the task orders are issued). Thus, for all the reasons discussed, we deny this aspect of WHR's protest.

Technical Approach Evaluation of WHR

The protester also challenges the agency's technical approach evaluation. Specifically, WHR maintains that the agency improperly failed to identify the technical advantages in WHR's quotation as significant strengths rather than ordinary strengths. Protest at 25-34. The protester also alleges the agency's evaluation was unequal and disparate. Comments and Supp. Protest at 38-45. Finally, WHR contends that the evaluation rating assigned to the protester's technical approach was improper and prejudicial. Protest at 34-36.

Where, as here, an agency issues an RFQ to GSA multiple award contract holders pursuant to FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Quotient, Inc.*, B-416473.6, B-416473.7, July 30, 2019, 2019 CPD ¶ 281 at 5. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with an agency's evaluation judgments, without more, does not establish that an evaluation was unreasonable. *Electrosoft Servs., Inc.*, B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

Categorization of WHR's Strengths

WHR first contends that the FBI unreasonably overlooked the overall merit of the protester's technical approach. Specifically, WHR contends that with regard to all three technical approach subfactors, several of the strengths identified in the protester's quotation should have instead been considered significant strengths. Protest at 25.

The RFQ's stated evaluation criteria, which included the agency's rating methodology, defined a "strength" as "[a]n aspect of a [quotation] that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." RFQ amend. 1 at 30. By comparison, a "significant strength" was defined as "[a]n aspect of a [quotation] that greatly exceeds specified performance or capability requirements in a way that will be very advantageous to the Government during contract performance." *Id.*

Relevant here, the technical approach factor consisted of three equally weighted subfactors are: homesale services; move management services; and program management and reporting. RFQ at 30. The SSEB, when evaluating WHR's technical approach, identified eight strengths and no weakness in the vendor's quotation. AR, Tab 13, Consensus Evaluation Report at 38-41. For each identified strength, the SSEB tied its evaluation finding to a specific SOW requirement and documented the associated benefit to the agency. *Id.* For example, with regard to the homesale services subfactor, the SSEB found the [DELETED] provided by WHR to its [DELETED] to be beneficial because having [DELETED] [would] better assist transferees with home sale and home purchase activities." AR, Tab 13, Consensus Evaluation Report at 38.

WHR argues that it was unreasonable for the agency to identify various aspects of its technical approach as "mere strengths" when the protester's quotation "greatly exceeded" specified performance requirements in ways that were *very* advantageous to the government. Protest at 29, *referencing* RFQ amend. 1 at 30 (significant strength definition). The agency responds that, consistent with the RFQ's definitions, the SSEB reasonably assigned eight strengths, rather than significant strengths, to WHR's technical approach, and that the protester's self-assessment amounts to mere disagreement with the agency's evaluation. MOL at 11-22.

We have considered all of WHR's assertions and find no basis on which to sustain the protest. The protester essentially argues the SSEB failed to give enough weight, or value, to those aspects of WHR's quotation that were identified as strengths. Without more, we find this to be a quintessential case of a protester's disagreement with the agency's evaluation judgment. We provide a representational example of such below.

For instance, WHR claims that its approach to customer service (under the homesale services subfactor) greatly exceeded requirements, and therefore should have received a significant strength. Protest at 27. The protester alleges that its quotation outlined numerous ways in which the vendor's approach exceeded expectations, including that

“[DELETED].” *Id.* at 27-28, referencing AR, Tab 12, WHR Quotation, Vol. I, Technical Approach at 9.

In response, the agency states the SSEB reviewed this aspect of WHR’s quotation and determined that WHR’s [DELETED] exceeded, but did not greatly exceed, the government requirements. MOL at 11-15; AR, Tab 16, SSEB Declaration at 1-2. Specifically, the agency evaluators stated that:⁶

We felt that WHR’s [DELETED] represents a proactive approach that would be beneficial to the FBI employee, thus beneficial to the Government, because they exceed the minimum requirement but do not greatly exceed the minimum requirement. WHR’s approach represents nothing more than an approach to timely customer service. While this is beneficial, it is not “very advantageous” to the FBI, falling short of the definition of a significant strength. . . .

AR, Tab 16, SSEB Declaration at 2.

We find the agency’ evaluation here to be reasonable. The evaluators found WHR’s proactive approach to customer service exceeded the RFQ’s specified requirements and of benefit to the agency. As the evaluators did not find the proposed approach to “greatly exceed” requirements, however, the approach represented a strength and not a significant strength in the SSEB’s assessment.

In sum, we find that the agency’s assignment of strengths, and not significant strengths, to WHR’s technical approach was reasonable, consistent with the stated evaluation criteria, and adequately documented. Although WHR may consider aspects of its technical approach to be of great value or benefit, such disagreement with the agency’s findings does not provide a basis on which to sustain the protest. *AdvancedMed Corp.*; *TrustSolutions, LLC*, B-404910.4 *et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 21 (finding that a protester’s disagreement with the weight or importance attached to particular proposal benefits provides no basis on which to sustain a protest).

⁶ The agency, as part of its report to our Office, provided a declaration from the SSEB members further explaining why the various features within WHR’s technical approach were considered to be strengths and not significant strengths. AR, Tab 16, SSEB Declaration at 1-9. While we accord greater weight to contemporaneous materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions-so long as those explanations are credible and consistent with the contemporaneous record. *Science & Tech. Corp.*, B-420216, Jan. 3, 2022, 2022 CPD ¶ 1 at 8 n.6.

Alleged Unequal Treatment in Assessment of Strengths

WHR also contends the agency engaged in unequal treatment as part of its technical approach evaluation. Comments and Supp. Protest at 43-45. Here, the protester contends that while awardee RELO Direct was assessed a strength for its proposed approach to [DELETED], the agency unreasonably failed to recognize the same in WHR's quotation. *Id.* at 43. WHR's quotation should have received a similar strength, the protester argues, because WHR also proposed [DELETED]. *Id.*

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *MetroStar Sys., Inc.*, B-419890, B-419890.2, Sept. 13, 2021, 2021 CPD ¶ 324 at 9 n.8; *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the vendors' quotations. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10. As detailed below, the record readily demonstrates that appreciable differences between the RELO Direct and WHR quotations supported the different evaluation results; thus, we find no basis to sustain this allegation.

As part of its technical approach, RELO Direct proposed, for its household goods partners, [DELETED]." AR, Tab 19, RELO Direct Quotation, Vol. I, Technical Approach at 12. The agency found this aspect of RELO Direct's quotation to be a strength: "[t]he [DELETED] will enhance the level of service the transferee and the government receive." AR, Tab 14B, SSDD at 4; see also Supp. COS at 3.

WHR argues that its quotation similarly contained a comprehensive approach to [DELETED] quality of TSPs, including the use of [DELETED], and therefore should have received a similar strength. Comments and Supp. Protest at 43-44. The agency responds that WHR's quotation did not, in fact, describe an approach of [DELETED], and to the extent it vaguely described the use of [DELETED], WHR's quotation was not equivalent to that of RELO Direct, and was not deserving of a strength. Supp. COS at 3.

We find no basis on which to sustain the allegation here, as the record reflects the agency's evaluation was reasonable and not unequal. While WHR's quotation did state that [DELETED]," we find the agency was reasonable to conclude that WHR's quotation lacked sufficient details regarding [DELETED] to warrant a strength, and was not equivalent to the approach described in RELO Direct's quotation. See AR, Tab 12, WHR Quotation, Vol. I, Technical Approach at 16. Our review of the record demonstrates that, here, appreciable differences between the RELO Direct and WHR quotations supported the different evaluation results.

WHR Technical Approach Evaluation Rating

The protester also contends that, even assuming none of its identified strengths were “significant” ones, WHR should have nevertheless received a rating of “outstanding” (rather than “acceptable”) under the technical approach factor. WHR points to the fact that, while not assessing a single weakness to WHR’s quotation, the SSEB identified eight separate instances where the vendor’s quotation was found to exceed the RFQ requirements in ways beneficial to the government. Based on the RFQ’s rating scheme, WHR argues, the underlying evaluation findings merited the assignment of a rating of “outstanding.” Protest at 34-36.

As set forth above, the RFQ established an adjectival rating scheme that would be used to assess vendors’ technical approach quotations. RFQ amend. 1 at 31. Relevant to the protest here, the RFQ defined an “outstanding” technical approach as one where the quotation “exceeds requirements and indicates [an] exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.” *Id.* By comparison, the RFQ defined an “acceptable” technical approach as one where the quotation “meets requirements and indicates [an] adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. The risk of unsuccessful performance is low to moderate.” *Id.*

The SSEB identified a total of eight strengths, and no weaknesses or deficiencies in WHR’s technical approach: some of the identified strengths consisted of multiple components or findings. AR, Tab 13, Consensus Evaluation Report at 38-41. The SSEB subsequently summarized its evaluation of WHR’s technical approach as follows:

WHR Group demonstrated a clear understanding of the Government’s requirement. Their proposal includes several capabilities that exceed the Government’s requirement or were added capabilities that are to the benefit of the Government.

* * * * *

WHR Group’s [quotation] meets the requirements and indicates an adequate approach and understanding of the requirements. There were no weaknesses identified in their technical approach. The Government has determined the risk of unsuccessful performance to be low to moderate.

Id. at 41-42.

WHR argues that based upon the eight assigned strengths, and no identified weaknesses or deficiencies, the vendor’s technical approach was “already found” by the agency to meet the criteria for an “outstanding” rating. Protest at 35. WHR also argues

that the agency's mere restatement of the "acceptable" rating definition does not adequately explain the rating assignment. Comments and Supp. Protest at 26.

The agency defends that it reasonably rated WHR's technical approach as "acceptable" in accordance with the RFQ. MOL at 22. The agency also relies upon the SSEB declaration stating in part that "[w]hile the aspects of [WHR's quotation] that received strengths are beneficial, they did not greatly exceed the requirements." AR, Tab 16, SSEB Declaration at 10. As detailed below, we find the agency's evaluation here to be both unreasonable and prejudicial to WHR.

Where, as here, agencies establish BPAs against GSA multiple award contracts for orders exceeding the simplified acquisition threshold, agencies are required to identify the criteria upon which vendors' quotations will be evaluated. FAR 8.405-2(c)(3)(ii), (d). An agency's chosen evaluation rating scheme, *i.e.*, how the stated criteria will be assessed, need not be part of the stated evaluation criteria and need not be disclosed in the solicitation. See FAR 8.405-2(c)(3)(ii); see also FAR 15.304(d); *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 7 (finding no requirement that the agency disclose its rating scheme as part of the solicitation); *URS Fed. Tech. Servs., Inc.*, B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 10 n.17.

Here, however, the agency made its rating methodology part of the RFQ's stated evaluation criteria. In such circumstances, our review of whether the agency's evaluation was reasonable and consistent with the terms of the solicitation, includes whether the evaluation was reasonable and consistent with the solicitation's ratings definitions. See *Hensel Phelps Constr. Co.*, B-407998.3, May 28, 2013, 2013 CPD ¶ 136 at 8; *Analytic Servs., Inc.*, B-405737, Dec. 28, 2011, 2012 CPD ¶ 16 at 8.

We find the adjectival rating assigned to WHR's technical approach to be unreasonable because it was not consistent with the RFQ's stated rating scheme. As set forth above, the RFQ established that an "outstanding" rating was warranted where, among other things, a quotation has merit or exceeds requirements, while an "acceptable" rating was warranted where a quotation meets requirements.⁷ RFQ amend. 1 at 31. The FBI has failed to adequately explain how the SSEB specifically found eight separate instances where WHR's quotation exceeded the RFQ's stated requirements (*i.e.*, the identified strengths) but then concluded overall, as it did, that the quotation only met the stated requirements.

Similarly, the RFQ established that a rating of "outstanding" was to be assigned where, among other things, "[s]trengths far outweigh any weaknesses," while an "acceptable" rating was appropriate where "[s]trengths and weaknesses are offsetting or will have

⁷ In this regard, the record also reflects the evaluators appeared to be under the mistaken understanding that it was necessary for a vendor's technical approach to "greatly exceed" requirements in order for an "outstanding" rating to be assigned. See AR, Tab 16, SSEB Declaration at 10 ("[w]hile the aspects of [WHR's quotation] that received strengths are beneficial, they did not greatly exceed the requirements.").

little or no impact on contract performance.” *Id.* Here, there is no dispute the agency identified eight strengths and no weaknesses or deficiencies in WHR’s quotation. Moreover, the SSEB documented how each strength would beneficially impact contract performance. AR, Tab 13, Consensus Evaluation Report at 38-41. Again, our review of the record cannot reconcile how the agency apparently concluded that WHR’s eight strengths and no weaknesses were offsetting, or that the strengths would have little or no impact on contract performance. In sum, we find the agency’s assignment of a technical approach rating of “acceptable” to WHR’s quotation to be unreasonable because the FBI failed to adequately document how it assigned the adjectival rating that it did, in light of the RFQ’s established rating scheme. *Supreme Foodservice GmbH*, B-405400.3 *et al.*, Oct. 11, 2012, 2012 CPD ¶ 292 at 8; *TVI Corp.*, B-297849, Apr. 19, 2006, 2007 CPD ¶ 118 at 5, 7.

We also find the error here to be prejudicial to the protester. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. *Information Mgmt. Res., Inc.*, B-418848, Aug. 24, 2020, 2020 CPD ¶ 279 at 7 n.4. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *Millennium Eng’g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9.

As detailed below, the record reflects that the SSA’s best-value tradeoff decision substantially relied upon the assigned adjectival ratings when determining the vendors’ quotations were essentially equal as to the non-price criteria, such that price became the determining factor. In such circumstances, we find that WHR was prejudiced by the agency’s assignment of an unsupported adjectival rating. *AT&T Gov’t Sols., Inc.*, B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 21, 28 (finding that the errors in the assignment of adjectival ratings to be prejudicial where the source selection authority relied upon those errors in the award decision); *contra ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 13-14 (finding protester’s challenge to the assigned adjectival evaluation rating to be without prejudice where the subsequent award decision was not based on the offerors’ assigned ratings but on the underlying evaluation findings).

Source Selection Decision

WHR also challenges the agency’s best-value award decision. The protester alleges that the agency deviated from the stated evaluation scheme when the SSA improperly decreased the relative importance of the two non-price factors (technical approach and past performance), and improperly increased the relative importance of price. As a result, WHR argues, the SSA unreasonably negated the substantial differences which existed between vendors with regard to both the technical approach and past performance evaluation criteria, and essentially made award on a lowest-price, technically acceptable (LPTA) basis, in violation of the terms of the RFQ. Comments and Supp. Protest at 3-24.

When, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for source selection on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to decide whether one quotation's technical superiority is worth its higher price. *FreeAlliance.com, LLC et al.*, B-419201.3 *et al.*, Jan. 19, 2021, 2021 CPD ¶ 56 at 23; *Harmonia Holdings Grp., LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 24. For acquisitions under subpart 8.4 that require a statement of work, such as this one, section 8.405-2(f) of the FAR specifically requires documentation of the rationale for any tradeoffs made in the selection. This rationale, or source selection decision documentation, must be in sufficient detail to show that it is reasonable. *CSR, Inc.*, B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 12.

In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Patriot Sols., LLC*, B-413779, Dec. 22, 2016, 2016 CPD ¶ 376 at 4. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced quotation must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and adequately explain why they are not worth the price premium. *Protection Strategies, Inc.*, B-414648.2, B-414648.3, Nov. 20, 2017, 2017 CPD ¶ 365 at 13. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 9; *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 10.

Our Office has also consistently explained that agencies may not base their selection decisions on adjectival ratings alone, as such ratings serve only as guides to intelligent decision-making; source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing quotations. See, e.g., *AT&T Mobility LLC, supra*; *Deloitte Consulting LLP*, B-417988.2 *et al.*, Mar. 23, 2020, 2020 CPD ¶ 128 at 11. While agencies may find that quotations are technically equivalent, the selection official must explain the basis for such a finding. In this regard, when a selection official reasonably regards quotations as being essentially equivalent technically, price may properly become the determining factor in making award, and it is not necessary to perform a price/technical tradeoff. *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 11; *Apogee Eng'g, LLC, supra* at 11 and 11 n.8. The factual predicate underlying these principles, however, is that the agency has reasonably determined that quotations are technically equivalent based on a documented qualitative assessment of the quotations. *AT&T Mobility LLC, supra* at 10.

As set forth above, the RFQ established three evaluation factors upon which a best-value tradeoff award decision would be made: technical approach, past performance, and price. RFQ amend. 1 at 30. The non-price factors were in descending order of importance, and were "individually and combined, significantly more important than

price.” *Id.* Thus, technical approach was more important than past performance; technical approach was significantly more important than price; and past performance was significantly more important than price.

The SSA, when making her award decision, began with an evaluation table of the vendors’ ratings and prices as follows:

	Technical Approach	Past Performance	Price ⁸
BGRS	Acceptable	Satisfactory Confidence	\$125,231,850
RELO Direct	Acceptable	Satisfactory Confidence	\$132,774,293
Allegiance	Outstanding	High Confidence	\$133,729,500
WHR	Acceptable	High Confidence	\$140,381,350
Vendor E	Acceptable	Satisfactory Confidence	\$141,891,183
Vendor F	Acceptable	Satisfactory Confidence	\$145,638,475

AR, Tab 14B, SSDD at 3.

Next, the SSA summarized the entirety of her tradeoff decision as follows: “Due to the similarities amongst vendor ratings for the non-price factors, price became more important. The following three vendors [BGRS, RELO Direct, and Allegiance] provide the best value to the Government.” *Id.*

The record reflects that the SSA also reviewed each vendor selected for award. First, with regard to BGRS, the SSA determined that, “[o]verall, BGRS’s quote provided numerous benefits and no risks to the Government. BGRS was the lowest priced quoter with a quoted price of \$125,231,850, which was determined to be fair and reasonable. Based on the benefits of BGRS’s quote and its lowest price offering, BGRS merits a BPA award.” *Id.* at 4.

Next, with regard to RELO Direct, the SSA concluded:

Overall, RELO Direct’s quote offered numerous benefits and no risk to the Government. RELO Direct was the second lowest priced quoter, with a quoted price of \$132,774,293.00, which was determined to be fair and reasonable. RELO Direct’s price is approximately \$7.5 million (6%), more than BGRS’s. However, as explored below, RELO Direct offers significant cost savings compared to the higher priced offerors. Given the benefit of RELO Direct’s quote and the cost savings provided compared to other

⁸ We note that the evaluation table did not order the vendors alphabetically, or according to the assigned ratings for the most important evaluation factor (technical approach), but according to the least important evaluation factor (price).

offerors, the Government is willing to pay the price premium compared to BGRS. Therefore, [RELO Direct] should receive a BPA award.

Id. at 4-5. With regard to Allegiance, the SSA found:

Allegiance was the highest rated quoter and offered significant benefits and no risk to the Government. Allegiance was the third lowest priced [vendor], with a quoted price of \$133,729,500.00, which was determined to be fair and reasonable. Allegiance's price is approximately \$8.5 million (6.7%) more than BGRS's. Allegiance's price was approximately \$1 million (.07%) higher than RELO Direct. However, as explored below, Allegiance offers significant cost savings compared to the higher priced offerors. Given the benefit of Allegiance's quote and the cost savings provided compared to other offerors, the Government is willing to pay the price premium compared to BGRS and RELO Direct. Therefore, Allegiance should receive a BPA award.

Id. at 6.

Finally, the SSA conducted comparisons between the selected and non-selected vendors, including WHR. When comparing quotations from BGRS and WHR, the SSA restated each vendor's technical approach strengths--three for BGRS, and eight for WHR--before concluding:

However, WHR's [technical approach] benefits come at a 12% and approximately \$15 million price premium. Because BGRS also offers a beneficial approach with no risk, the additional benefits of WHR's quote are not worth the significant extra cost.

Similarly, the past performance factor does not merit paying the premium for [WHR's] marginally better quote. WHR . . . received a High Confidence for its [prior] work on However, BGRS also received positive past performance for its [prior] work on Given that past performance was the least weighted non-price factor, it is not in the Government's best interest to pay a \$15 million price premium for slightly better past performance from WHR."

Id. at 8.

The SSA also conducted a similar comparison between the quotations from RELO Direct and WHR. While recognizing that WHR's technical approach included advantages (*i.e.*, strengths) that RELO Direct's did not, the SSA concluded that:

WHR's other benefits such as . . . do not merit paying the 5.7% or approximately \$7.6 million price premium.

Similarly, the past performance factor does not merit paying the premium for WHR Group's marginally better quote. WHR Group received a High Confidence for its [prior] work on. . . . However, RELO Direct also received positive past performance for its [prior] work on. . . . Given that past performance was the least weighted non-price factor, it is not in the Government's best interest to pay a \$7.6 million price premium for slightly better past performance from WHR.

Id.

WHR argues that the SSA improperly downplayed the superiority of WHR's quotation under both the technical approach and past performance factors to justify making award on the basis of price. Comments and Supp. Protest at 3. The protester also argues the methodology used by the SSA in conducting tradeoffs between WHR and the awardees, *i.e.*, considering each non-price factor in isolation against price, was irrational and inconsistent with the RFQ's stated evaluation criteria. *Id.* at 5. At bottom, WHR argues, "the SSA's tradeoffs improperly minimized WHR's advantages on the non-price factors and had the effect of converting this best value procurement into an LPTA procurement." *Id.* at 12.

The agency claims that the record shows the FBI's best-value tradeoff determination was well-documented, consistent with the requirements of the RFQ, and reasonable. Supp. MOL at 11. The agency also contends the SSA reasonably explained why it was not in the government's best interest to pay the price premium for WHR's quotation in comparison to the awardees. *Id.* at 12. Finally, the agency argues, the protester's assertion that the SSA failed to give the technical approach and past performance factors the proper weight required by the RFQ is mere disagreement with the FBI's reasonable determination. *Id.* We disagree.

We find the agency's best-value tradeoff decision, here, to be unreasonable and inconsistent with the RFQ's stated evaluation criteria. The record reflects that the SSA improperly decreased the relative importance of the technical approach and past performance factors, and improperly increased the relative importance of price, from that set forth in the RFQ. Consequently, with regard to WHR, the SSA unreasonably negated the non-price differences which existed between the protester and various awardees, and unreasonably concluded--without sufficient explanation--that WHR's advantages under the technical approach and past performance factors were not worth the price premium. A tradeoff analysis that fails to furnish adequate explanation as to why a higher-rated quotation does not, in fact, offer technical advantages or why those technical advantages are not worth a price premium, does not satisfy the requirement for a documented tradeoff rationale, especially where, as here, price is significantly less important than the non-price factors. *Patriot Sols, LLC, supra*; *Blue Rock Structures, Inc.*, B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 6.

Our review of the record reflects that, notwithstanding the qualitative differences which existed between vendors with regard to both technical approach and past performance

factors, the SSA unreasonably approached the best-value determination from the perspective that there was little difference between the vendors in these non-price areas--because of the assigned adjectival ratings. The contemporaneous record, however, is devoid of any explanation or rationale as to why the SSA found vendors rated as either "outstanding" or "acceptable" for the technical approach factor to be "similar[]" to each other. AR, Tab 14B, SSDD at 3. Likewise, the SSA provides no analysis as to why vendors rated as either "high confidence" or "satisfactory confidence" under the past performance factor were "similar[]" to each other. *Id.* Having incorrectly concluded that all vendors were essentially comparable for all non-price factors, the SSA then unreasonably made price the determining factor. See *AT&T Mobility LLC, supra* ("The factual predicate [to making price the determining factor] . . . is that the agency has reasonably determined that the . . . proposals are technically equivalent.").

With regard to the non-selection of WHR specifically, the agency's best-value tradeoff decision was inconsistent with the RFQ's stated evaluation criteria. First, when comparing WHR to BGRS and RELO Direct under the technical approach factor, the SSA merely concluded--and failed to adequately explain why--the additional benefits associated with WHR's quotation were not worth the higher cost. See AR, Tab 14B, SSDD at 8 ("the additional benefits of WHR's quote [as compared to BGRS] are not worth the significant extra cost," and "WHR's other benefits [as compared to RELO Direct] . . . do not merit paying the 5.7% or approximately \$7.6 million price premium"). As stated above, an award decision in favor of a lower-rated, lower-priced quotation must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and adequately explain why they are not worth the price premium. *Protection Strategies, Inc., supra*. Moreover, an agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *AT&T Mobility LLC, supra* at 9; *Apogee Eng'g, LLC, supra* at 9.

The record also demonstrates that SSA improperly decreased the relative importance of past performance, thereby unreasonably negating WHR's past performance advantage vis-à-vis BGRS and RELO Direct. As set forth above, WHR was rated "high confidence" (*i.e.*, a high expectation of successful performance) while BGRS and RELO Direct were each rated "satisfactory confidence" (*i.e.*, a reasonable expectation of successful performance). AR, Tab 14B, SSDD at 3. Notwithstanding the different assigned ratings, the SSA found the difference in the vendors' past performance to be essentially nominal ones, *i.e.*, all vendors had positive past performance. *Id.* at 8. The SSA also failed to recognize that, while past performance may have been the "least weighted" non-price factor, it nevertheless remained significantly more important than price in the solicitation's stated evaluation scheme. *Id.* Finally, the record reflects the SSA treated the price premiums between WHR and RELO Direct (5.7%), and between WHR and BGRS (12%), as significantly more important than that established by the solicitation.

Given the SSA's misapplication of the relative importance of the solicitation's stated evaluation criteria, we find the FBI's best-value decision here to be unreasonable,

inconsistent with the RFQ's stated evaluation criteria, and prejudicial to WHR. Accordingly, we sustain the protester's challenge to the source selection decision. See *AT&T Mobility LLC, supra* (sustaining protest where the agency's award decision was inconsistent with the solicitation's stated evaluation scheme and failed to qualitatively compare proposals); *GlassLock, Inc.*, B-299931, B-299931.2, Oct. 10, 2007, 2007 CPD ¶ 216 at 7-8 (sustaining protest when the selection decision did not include "any analysis, determination or even statement that [the awardee's] lower price offset the technical advantages that could result from [the protester's] quotation's higher technical ratings"); *Apogee Eng'g, LLC, supra* at 11 (sustaining protest when the selection official selected the lowest-priced proposal from amongst three that received ratings of exceptional without looking behind the ratings to compare the differing strengths assessed in each offeror's proposal).

CONCLUSION AND RECOMMENDATION

We find the technical approach evaluation rating assigned to WHR's quotation to be unreasonable and prejudicial to the vendor. We also find the agency's best-value decision to be unreasonable insofar as the SSA improperly decreased the relative importance of the technical approach and past performance factors, and improperly increased the relative importance of price, from that set forth in the RFQ. Consequently, with regard to WHR, the SSA unreasonably negated the non-price advantages possessed by WHR vis-à-vis various awardees, and unreasonably concluded, without adequate explanation, that WHR's advantages under both the technical approach and past performance factors did not outweigh the associated price premium.

We recommend that the FBI reevaluate and document the agency's evaluation of WHR's technical approach. We also recommend that the agency conduct and document a new best-value tradeoff analysis. If the new source selection decision concludes that vendors other than BGRS, RELO Direct, Allegiance, represent the best value to the government, the agency should terminate the relevant BPAs and make award to the successful vendor(s), if otherwise proper. We also recommend that WHR be reimbursed for its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

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